

# Access to information: Lessons from Fukushima Nuclear Accident

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# Fukushima accident and its consequences

- The earthquake and tsunami on 11 March 2011 disabled the reactor cooling systems of Fukushima Daiichi nuclear power plant, which caused meltdown of the 3 reactor cores.
- The accident has led to a significant emissions of radioactive substances into the environment.
- More than 80,000 peoples are still not allowed to return to their home because of high-level of radioactive concentration. Concern has been raised about **risk to health**, although there's **divergence of views about risk of exposure to low level radioactivity**.
- Some researches show the existence of **a potential ecological risk**, especially to the terrestrial ecosystem in the evacuation zone. Concern has been increasing for bioaccumulation in fish and marine animals.
- The knowledge about a radiological risk to the ecosystem is still very limited, which entails **scientific uncertainty**.

# Japanese responses relevant to access to information(1)

- The government was not only **slow in informing municipal governments and the public about the nuclear power plant accident**, but also it **failed to convey the accurate information to those who needed it for informed decisions at the appropriate timing**.
  - Many residents were unaware that the accident had occurred, or of its drastic escalation and the radiation leakage, even after the government and some municipalities were informed.
    - Only 20 percent of the residents of the town hosting the plant knew about the accident when evacuation from the 3km zone was ordered at 21:23 on the evening of March 11. Most residents within 10km of the plant learned about the accident when the evacuation order was issued at 5:44 on March 12, more than 12 hours after the Article 15 notification, but received no further explanation of the accident or evacuation directions (Report of the Investigation Commission under the Diet)
  - Many residents had to flee with only the barest necessities and were forced to move multiple times or even to areas with high radiation levels.

# Japanese responses relevant to access to information(2)

- Some areas within the 30-kilometer zone suffered from high radiation levels was known after the **System for Prediction of Environmental Emergency Dose Information (SPEEDI)** data was released on March 23.
  - Government had not made SPPEEDI data available to the public until March 23, pretending that there was **no calculation data** and then that the **material was in the course of completion**.
  - Some residents were evacuated to areas with high levels of radiation because radiation monitoring information was not provided.
  - Some people evacuated to areas with high levels of radiation were neglected, receiving no further evacuation orders until April.

# 避難指示区域と警戒区域の概念図

平成24年11月30日現在



# Japanese responses relevant to access to information(3)

- Information of impacts on health and of protection against radiation had not reached the population who needed it.
  - Although there is no consensus among experts on the health effects of low dose radiation exposure, it is agreed that the limits should be set as low as can be reasonably achieved. The government needed to make efforts to explain the need for limits, and the levels decided, in ways that are clear and understandable to ordinary citizens.
  - Although some risk of low dose radiation exposure, such as risk of thyroid cancer among children and the positive effects of administering stable iodine with the proper timing were fully known, the government and the prefectural government failed to give proper instructions to the public.

# Access to information in the context of Fukushima accident (1)

- What Japanese responses to Fukushima accident has revealed in terms of access to information.
  - Collection and dissemination of environmental information (Art. 5 of Aarhus Convention), especially in emergency situation (Art. 5.1 (c)), are not adequately recognized and implemented.
    - Break down of monitoring system (due to lack of back up power/system)
    - Delay and/or lack of accurate and understandable information to the public, which could not enable the public to take measures to prevent or mitigate harm arising from the threat.
      - In some case, impose unnecessary exposure to radioactivity through inappropriate evacuation order.
      - Deprived from the public the opportunity to protect rights by themselves?

# Article 5 of Aarhus Convention

- Each Party shall ensure that: (Art. 5.1)
  - (a) Public authorities possess and update environmental information which is relevant to their functions;
  - (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
  - (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.
- Nothing in this article may prejudice the right of Parties to refuse to disclose certain environmental information in accordance with arts 4.3 and 4.4.



# Access to information in the context of Fukushima accident (2)

- The positive obligation to inform the public can be derived from some fundamental human rights, especially in an emergency situation.
- The right to respect for his private and family life (Art. 8 of the ECHR)
  - Guerra and Others v. Italy (116/1996/735/932) 19 February 1998
    - “ it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life.”
    - “the applicants waited, right up until the production of fertilisers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live at Manfredonia, a town particularly exposed to danger in the event of an accident at the factory.”

# Access to information in the context of Fukushima accident (3)

- **The right to life**
  - UN Covenant on Civil and Political Rights, Article 6 [1];
    - “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”
  - European Convention on Human Rights, Article 2;
    - “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”
  - Oneryildiz v. Turkey (ECHR, 30 November 2004)
    - “The Court reiterates that Article 2 does not solely concern deaths resulting from the use of force by agents of the State but also, in the first sentence of its first paragraph, lays down **a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.**”
- Human rights law can provide a supporting basis for access to information in such an emergency situation.

# Some wrap up comments(1)

- **Added value for guaranteeing access to environmental information.**
  - Human rights treaties have provided effective remedies but limiting their application in case of existence of certain high level of risk.
    - ex. Oneryildiz v. Turkey (ECHR, 18 July 2002)
      - “the responsibility they incurred for letting the members of the Öneriyıldız family continue to expose themselves to **real and imminent dangers** which, even before the rubbish tip began to endanger life, already threatened the sphere of private life – within the meaning of Article 8 – encompassing physical integrity”
  - Access to environmental information could **provide information on risk including the one with scientific uncertainty**
  - It could **enable the public to make informed decision for its own in face of such risk, prior to occurrence of injury to rights.**
  - It could also **make it easier for affected people to get evidential information** when they wish to seek remedies.

# Some wrap-up comments(2)

- Lessons from Japanese experiences after Fukushima accident
  - Prescribe clearly in national legislation a positive obligation of States to inform the public of imminent risk in order to ensure immediate dissemination to the public that could be affected by such risk especially in an emergency situation including disaster situation.
  - Robust systems to guarantee adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment.
    - Including long-term monitoring on ecological risk of radiation.
  - Ensure access to information in the time of privatization
    - One of the barriers is that most of information was held by the TEPCO.
    - Through establishing robust systems to guarantee adequate flow of information to public authorities
    - in line with the Aarhus Convention, through enlarging the definition of public authorities.